83

MONTANA LEGISLATIVE HISTORY

Chapter 442 19 89

Bill H 592 S _____ Original bill & history ✓ C

H. Committee on Business + Econ			S. Committee on Cons + Energy		
Hearing Date(s)	2/16	✓ C	Hearing Date(s)	3/4	✓ C
	2/17	✓ C		3/9	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

437 *(House Bill No. 486; Anderson)* DEFINING "INSTITUTIONAL CONTROL"; CLARIFYING THE DEFINITION OF "ORPHAN SHARE"; REQUIRING THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY GIVE DUE CONSIDERATION TO INSTITUTIONAL CONTROLS IN SELECTING REMEDIAL ACTIONS; ESTABLISHING AN INSTITUTIONAL CONTROL PROCESS; PROPORTIONATELY REDUCING THE ORPHAN SHARE IF A POTENTIALLY RESPONSIBLE PERSON RECOVERS REMEDIAL ACTION COSTS FROM A FINANCIALLY RESPONSIBLE PARTY; AMENDING SECTIONS 75-10-701, 75-10-715, AND 75-10-721, MCA; REPEALING SECTION 27, CHAPTER 584, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1765

438 *(House Bill No. 513; Witt)* PROVIDING THAT AGRICULTURAL PROPERTY THAT IS USED TO PRODUCE UNRELATED BUSINESS TAXABLE INCOME DOES NOT QUALIFY AS PROPERTY USED PURELY FOR PUBLIC CHARITABLE PURPOSES OF QUALIFYING FOR A PROPERTY TAX EXEMPTION; REVISING THE DEFINITION OF "INSTITUTIONS OF PURELY PUBLIC CHARITY"; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE 1776

439 *(House Bill No. 532; Anderson)* REQUIRING GOVERNMENT ENTITIES TO DECIDE WITHIN 10 DAYS AFTER A REQUEST FOR FINAL ACCEPTANCE BY THE CONSTRUCTION CONTRACTOR WHETHER OR NOT TO FINALLY ACCEPT THE CONSTRUCTION OF A BUILDING AND TO MAKE FINAL PAYMENT OF THE PRICE OF CONSTRUCTION CONTRACTS WITHIN 30 DAYS OF FINAL ACCEPTANCE OF THE CONSTRUCTION OF THE BUILDING; REQUIRING PAYMENT OF INTEREST; AND PROVIDING AN APPLICABILITY DATE 1779

440 *(House Bill No. 560; Hanson)* GENERALLY REVISING COUNTY ROAD LAWS; CLARIFYING THE DUTIES OF A BOARD OF COUNTY COMMISSIONERS REGARDING COUNTY ROADS; ESTABLISHING THE CONDITIONS UNDER WHICH A ROAD MAY BE DESIGNATED AS A COUNTY ROAD; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO TEMPORARILY CLOSE A ROAD UNDER ITS JURISDICTION; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO MAINTAIN A ROAD TO THE DEGREE THAT IT DETERMINES IS APPROPRIATE; REQUIRING THAT PUBLIC NOTICE BE GIVEN AND A PUBLIC HEARING BE HELD BEFORE A ROAD MAY BE ABANDONED BY THE STATE; AND AMENDING SECTIONS 7-14-2101, 7-14-2103, 7-14-2127, 60-1-201, AND 60-2-107, MCA 1780

441 *(House Bill No. 584; Juneau)* AUTHORIZING SURPLUS STATE PROPERTY TO BE DONATED TO SCHOOL DISTRICTS FOR CLASSROOM USE PURSUANT TO PROCEDURES IMPLEMENTED BY THE OFFICE OF PUBLIC INSTRUCTION TO ENSURE ADEQUATE NOTICE OF THE AVAILABILITY OF STATE SURPLUS PROPERTY AND EQUAL ACCESS AND FAIR DISTRIBUTION OF THE PROPERTY TO SCHOOL DISTRICTS; AMENDING SECTIONS 2-17-202, 18-4-226, AND 18-6-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1783

442 *(House Bill No. 592; Hibbard)* IMPLEMENTING HOUSE JOINT RESOLUTION NO. 10 TO REVISE THE PROCESSES FOR RESOLVING EMPLOYMENT-RELATED DISPUTES; ELIMINATING THE APPELLATE ROLE OF THE BOARD OF PERSONNEL APPEALS IN REVIEWING WAGE CLAIM DISPUTES; PROVIDING FOR THE APPEAL OF DEPARTMENT HEARINGS EXAMINERS' DECISIONS

IN WAGE CLAIMS CASES TO THE DISTRICT COURT; ESTABLISHING A TIMEFRAME FOR RECOVERY OF IMPROPERLY PAID WAGES; TRANSFERRING FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE WORKERS' COMPENSATION COURT EXCLUSIVE JURISDICTION OVER COMPENSATION AND BENEFIT ISSUES ARISING UNDER THE OCCUPATIONAL DISEASE ACT, THE WORKERS' COMPENSATION ACT, AND THE APPLICATION OF INDEPENDENT CONTRACTOR STATUS; AUTHORIZING THE WORKERS' COMPENSATION COURT TO COLLECT A PENALTY FOR WORKERS' COMPENSATION BENEFIT THEFT; REQUIRING THAT CASES INVOLVING WAGE AND HOUR, THE UNINSURED EMPLOYER FUND, AND INDEPENDENT CONTRACTOR ISSUES INCLUDE MEDIATION PRIOR TO CONTESTED CASE PROCEEDINGS; PROVIDING A COLLATERAL ESTOPPEL PROVISION TO PROHIBIT DECISIONS PERTAINING TO UNEMPLOYMENT INSURANCE BENEFITS FROM BEING USED IN RELATED DISPUTES; AMENDING SECTIONS 15-30-248, 39-3-201, 39-3-207, 39-3-212, 39-3-216, 39-9-401, 39-51-310, 39-51-1109, 39-71-304, 39-71-315, 39-71-316, 39-71-317, 39-71-401, 39-71-415, 39-71-601, 39-71-610, 39-71-613, 39-71-704, 39-71-1032, 39-72-403, 39-72-601, 39-72-602, 39-72-607, AND 39-72-608, MCA; REPEALING SECTIONS 39-3-217, 39-72-609, 39-72-610, 39-72-611, 39-72-612, AND 39-72-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1784

443 *(House Bill No. 621; Witt)* APPROPRIATING FUNDS TO THE DEPARTMENT OF COMMERCE FOR GRANTS TO LOCAL GOVERNMENTS SUBMITTING PROPOSALS TO LOCATE THE VENTURE STAR PROJECT IN MONTANA; PROVIDING CONDITIONS FOR THE RECEIPT AND USE OF GRANT FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1801

444 *(House Bill No. 638; Somerville)* PROVIDING A TAX CREDIT FOR QUALIFIED RESEARCH EXPENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1802

445 *(House Bill No. 652; Guggenheim)* REVISING THE DEFINITION OF "INCOME" AS IT RELATES TO THE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY; EXCLUDING THE TAXPAYER'S BASIS IN THE DETERMINATION OF INCOME; AMENDING SECTION 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1803

446 *(House Bill No. 656; Bookout-Reinicke)* GENERALLY REVISING THE TAX DEED PROCESS BY PROVIDING A FORM TO RECORD OR FILE CANCELLATIONS OF TAX SALES CERTIFICATES; PROVIDING A FORM FOR A CERTIFICATE OF REDEMPTION; REQUIRING THAT THE CANCELLATION OF A TAX SALE CERTIFICATE AND A CERTIFICATE OF REDEMPTION BE FILED OR RECORDED WITH THE COUNTY CLERK AND RECORDER; PROHIBITING THE IMPOSITION OF A CHARGE FOR FILINGS OR RECORDINGS RELATED TO THE TAX DEED PROCESS; AMENDING SECTIONS 15-18-113 AND 15-18-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1805

447 *(House Bill No. 657; Davies)* REVISING THE TAXATION OF ESTATE OR TRUST INCOME BASED ON THE TAXABLE DISTRIBUTION OF THE ESTATE OR TRUST; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1809

HB 592 Introduced by Hibbard, et al. *LC0609 Drafter: McClure*

Implement House Joint Resolution No. 10 to Revise the Processes for Resolving Employment-related Disputes;...

2/11	Introduced and 1st Reading		
2/11	Referred to Business and Labor		
2/11	Fiscal Note Requested		
2/16	Hearing		
2/17	Fiscal Note Received		
2/18	Fiscal Note Signed		
2/18	Committee Executive Action--Bill Passed as Amended	18	0
2/18	Committee Report--Bill Passed as Amended		
2/19	Fiscal Note Printed		
2/19	Revised Fiscal Note Requested		
2/20	2nd Reading Passed as Amended	87	9
2/23	Revised Fiscal Note Received		
2/23	3rd Reading Passed	90	10
	Transmitted to Senate		
2/23	Revised Fiscal Note Signed		
2/23	Referred to Labor and Employment Relations		
2/24	Revised Fiscal Note Printed		
3/04	Hearing		
3/10	Committee Executive Action--Bill Concurred as Amended	8	1
3/10	Committee Report--Bill Concurred as Amended		
3/16	2nd Reading Concurred as Amended	49	0
3/17	3rd Reading Concurred	49	0
	Returned to House with Amendments		
4/10	2nd Reading Senate Amendments Concurred	92	8
4/12	3rd Reading Passed as Amended by Senate	86	12
4/12	Sent to Enrolling		
4/14	Returned from Enrolling		
4/14	Signed by Speaker		
4/15	Signed by President		
4/16	Transmitted to Governor		
4/23	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 442		
	Effective Date: 4/23/1999 - All Sections		

HB 593 Introduced by Harper, et al. *LC0908 Drafter: Lane*

Provide for Confidentiality in Mediation Proceedings;...

2/11	Introduced and 1st Reading		
2/11	Referred to Judiciary		
2/16	Hearing		
2/17	Committee Executive Action--Bill Passed as Amended	18	1
2/18	Committee Report--Bill Passed as Amended		
2/20	2nd Reading Passed	92	8
2/22	3rd Reading Passed	92	7
	Transmitted to Senate		
2/23	Referred to Judiciary		
3/15	Hearing		

INTRODUCED BY _____ (Primary Sponsor) HOUSE BILL NO. 592

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING HOUSE JOINT RESOLUTION NO. 10 TO REVISE THE PROCESSES FOR RESOLVING EMPLOYMENT-RELATED DISPUTES; ELIMINATING THE APPELLATE ROLE OF THE BOARD OF PERSONNEL APPEALS IN REVIEWING WAGE CLAIM DISPUTES; PROVIDING FOR THE APPEAL OF DEPARTMENT HEARINGS EXAMINERS' DECISIONS IN WAGE CLAIMS CASES TO THE DISTRICT COURT; ESTABLISHING A TIMEFRAME FOR RECOVERY OF IMPROPERLY PAID WAGES; ELIMINATING THE BOARD OF LABOR APPEALS AND PROVIDING FOR APPEAL OF DEPARTMENT APPEALS REFEREES' DECISIONS IN UNEMPLOYMENT BENEFIT CASES TO THE DISTRICT COURT; TRANSFERRING FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE WORKERS' COMPENSATION COURT EXCLUSIVE JURISDICTION OVER COMPENSATION AND BENEFIT ISSUES ARISING UNDER THE OCCUPATIONAL DISEASE ACT, THE WORKERS' COMPENSATION ACT, AND THE APPLICATION OF INDEPENDENT CONTRACTOR STATUS; AUTHORIZING THE WORKERS' COMPENSATION COURT TO COLLECT A PENALTY FOR WORKERS' COMPENSATION BENEFIT THEFT; REQUIRING THAT CASES INVOLVING WAGE AND HOUR, THE UNINSURED EMPLOYER FUND, AND INDEPENDENT CONTRACTOR ISSUES INCLUDE MEDIATION PRIOR TO CONTESTED CASE PROCEEDINGS; PROVIDING A COLLATERAL ESTOPPEL PROVISION TO PROHIBIT DECISIONS PERTAINING TO UNEMPLOYMENT INSURANCE BENEFITS FROM BEING USED IN RELATED DISPUTES; AMENDING SECTIONS 15-30-248, 39-3-201, 39-3-207, 39-3-212, 39-3-216, 39-9-401, 39-51-201, 39-51-301, 39-51-603, 39-51-1109, 39-51-2403, 39-51-2405, 39-51-2407, 39-51-2410, 39-51-3101, 39-51-3104, 39-71-304, 39-71-315, 39-71-316, 39-71-317, 39-71-401, 39-71-415, 39-71-601, 39-71-610, 39-71-613, 39-71-704, 39-71-1032, 39-72-403, 39-72-601, 39-72-602, 39-72-607, AND 39-72-608, MCA; REPEALING SECTIONS 2-15-1704, 39-3-217, 39-51-310, 39-51-2404, 39-72-609, 39-72-610, 39-72-611, 39-72-612, AND 39-72-613, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE."

WHEREAS, Montana's current employment statutes constitute a complex and often confusing body of law requiring specialized skills and knowledge to interpret; and

WHEREAS, most employers in the private sector employ 10 or fewer employees and function

without the assistance of personnel officers or in-house legal staff; and

WHEREAS, employment-related disputes are currently heard in many different forums, including the Board of Personnel Appeals for wage and hour issues, the Board of Labor Appeals for unemployment insurance issues, the Workers' Compensation Court for workers' compensation issues, the Commission for Human Rights for discrimination issues, and District Courts for the resolution of wrongful discharge conflicts; and

WHEREAS, the 1997 Legislature enacted House Joint Resolution No. 10, which directed the Department of Labor and Industry to convene a group of interested parties to explore, investigate, and report to the 1999 Legislature optional approaches to an integrated dispute resolution process for employment-related issues; and

WHEREAS, members of the Legislature and interest groups, including employers and employees from the private and public sectors, formed the House Joint Resolution No. 10 work group, which convened in September 1997 to begin studying the issues related to the employment dispute resolution process; and

WHEREAS, after approximately 10 meetings during the 1997 interim, the work group issued its report in November 1998, recommending that legislation be prepared for consideration by the 1999 Legislature to revise the dispute resolution process for employment-related issues.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-248, MCA, is amended to read:

"**15-30-248. Determination of employer status.** A final determination by either the department of labor and industry or the ~~board of labor appeals~~ workers' compensation court that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2, which may be subject to judicial review, as provided in 39-51-2404, at the discretion of the taxpayer, is not subject to any further administrative or judicial challenge in any proceeding before or with the department of revenue concerning a determination of the proper amount of state income tax withholding and old fund liability tax to be paid."

Section 2. Section 39-3-201, MCA, is amended to read:

"**39-3-201. Definitions.** The following are the definitions used for the purpose of this part:

~~(1) "Board" means the board of personnel appeals provided for in 2-15-1705.~~

~~(2)~~(1) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by the director, commissioner, or chief for the purpose of this part.

~~(3)~~(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

~~(4)~~(3) "Employ" means to permit or suffer to work.

~~(5)~~(4) "Employee" includes any person who works for another for hire.

~~(6)~~(5) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States.

~~(7)~~(6) (a) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and gratuities that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection ~~(7)~~ (6), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement."

Section 3. Section 39-3-207, MCA, is amended to read:

"**39-3-207. Period within which employee may recover wages and penalties.** ~~Any~~ (1) An employee may recover all ~~such~~ wages and penalties ~~as are~~ provided for the violation of 39-3-206 ~~which have accrued to him at any time within 18 months succeeding such default or delay in the payment of such wages~~ by filing a complaint within 180 days of default or delay in the payment of wages.

(2) Except as provided in subsection (3), an employee may recover wages and penalties for a period of 2 years prior to the date on which the claim is filed.

(3) If an employer has engaged in repeated violations, an employee may recover wages and

penalties for a period of 3 years from the date on which a claim is filed."

Section 4. Section 39-3-212, MCA, is amended to read:

"**39-3-212. Court enforcement of administrative decision.** (1) A department default order~~,~~ or a decision of the hearings officer, ~~if the decision is not appealed to the board, or a decision of the board,~~ if judicial review is not sought, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision.

(2) If judicial review is sought, the district court may issue an order or a judgment enforcing the decision of the ~~board~~ department or the hearings officer in a wage claim proceeding. In a case involving failure to pay the standard prevailing rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment enforcing the decision of the hearings officer."

Section 5. Section 39-3-216, MCA, is amended to read:

"**39-3-216. ~~Hearing~~ Mediation -- hearing.** (1) If the department determines that a wage claim is valid and the employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due and for any penalty assessed pursuant to 39-3-206. The department may enforce the default order pursuant to 39-3-212.

(2) If a party disputes the determination of the department prior to a contested case, the department shall conduct mediation of the dispute in accordance with guidelines to be established by department rule.

~~(2)~~(3) When the department determines that a wage claim is valid, the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that service need not be made as prescribed for civil actions in the district court and the hearings officer is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference. The department shall by rule provide relief for a person who does not receive the determination by mail.

~~(3)~~(4) The decision of the hearings officer is final unless ~~further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause~~ an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the hearings officer's decision."

Section 6. Section 39-9-401, MCA, is amended to read:

"**39-9-401. Violation -- infraction -- penalty -- disposition.** (1) It is a violation of this chapter and an infraction for any construction contractor to:

(a) perform work as a construction contractor without being registered as required by this chapter;

(b) perform work as a construction contractor when the construction contractor's registration is suspended; or

(c) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

(2) (a) A determination by the department of a violation of this section subjects the person who commits the violation to a penalty of up to $500, as determined by the department. A person who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedure Act. The hearing may be held by telephone or video conference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403 ~~and 39-51-2404~~.

(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

(c) A penalty collected under this section must be deposited in the uninsured employers' fund established in 39-71-502."

NEW SECTION. **Section 7. Collateral estoppel.** A finding of fact or law, judgment, conclusion, or final order made with respect to a determination made under this chapter may not be conclusive or binding or used as evidence in any separate or subsequent action or proceeding in another forum except for proceedings under this chapter, regardless of whether the prior action was between the same or

related parties or involved the same facts.

Section 8. Section 39-51-201, MCA, is amended to read:

"**39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

~~(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.~~

~~(6)~~(5) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

~~(7)~~(6) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

~~(8)~~(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(9)~~(8) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

~~(10)~~(9) "Employing unit" means any individual or organization (including the state government and any of its political subdivisions or instrumentalities), partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

~~(11)~~(10) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities ~~as~~ that the department may approve.

~~(12)~~(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

~~(13)~~(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee

or the employer.

~~(14)~~(13) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

~~(15)~~(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

~~(16)~~(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding subsection ~~(16)(a)~~ (15)(a), all universities in this state are institutions of higher education for purposes of this part.

~~(17)~~(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

~~(18)~~(17) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(19)~~(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

~~(20)~~(19) (a) "Wages", unless specifically exempted under subsection ~~(20)(b)~~ (19)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than

cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan, as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family; or

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

~~(21)~~(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(22)~~(21) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 9. Section 39-51-301, MCA, is amended to read:

"**39-51-301. Administration -- duties and powers of department.** (1) It is the duty of the department to administer this chapter, and it may adopt, amend, or rescind rules, to employ persons, make expenditures, require reports, make investigations, and take action as it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance

with the provisions of this chapter and ~~shall~~ must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department ~~and the board~~ may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) The department shall delegate to the department of revenue duties associated with the administration of unemployment insurance contributions and the employment security account so long as the duties are carried out in conformity with the requirements of the program budget plan with the United States department of labor. The delegated duties do not include oversight duties, such as revenue quality control, risk management, and trust fund management. The department of revenue must receive funds from the department for the performance of the delegated duties.

(6) Employees transferring from the department to the department of revenue as a result of a delegation of duties in subsection (5) are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy, including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department for recruitment purposes for the period from July 1, 1997, through June 30, 1998.

(7) The department of revenue shall succeed the department in its rights to property relating to the delegation of duties in subsection (5) to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

(8) (a) The delegation of duties in subsection (5) does not affect the validity of any pending judicial or administrative proceeding.

(b) Appeals that were filed with ~~the board of labor appeals or~~ the department's hearings bureau before July 1, 1997, must follow the procedures and processes in effect when the appeal was first taken. An appeal that is filed on or after July 1, 1997, must be taken in accordance with the procedures and processes in effect on the date the appeal is filed.

(c) The department of revenue must be substituted for the department and succeed to all audits, determinations, and other actions that have not been appealed to ~~the board of labor appeals or~~ the department's hearings bureau prior to July 1, 1997.

(9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the delegation of duties in subsection (5) remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department of revenue is substituted for the department and, subject to the provisions of subsection (5), succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection (9) do not apply to the program budget plan agreement between the department and the United States department of labor."

Section 10. Section 39-51-603, MCA, is amended to read:

"**39-51-603. Employing unit to keep records and make reports.** (1) Each employing unit shall keep true and accurate work records containing the information that the department may prescribe. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employing unit that maintains its records outside Montana shall furnish a copy of those records to the department at the employing unit's expense or shall pay the department for the costs associated with conducting the audit outside Montana.

(2) The department ~~and the presiding officer of any appeal tribunal~~ may require from any employing unit any sworn or unsworn reports with respect to persons employed by it that the department considers necessary for the effective administration of this chapter.

(3) Information obtained from any individual under this chapter must, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or the claimant's legal representative at a hearing ~~before the board or appeal tribunal~~ must be supplied with information from the records to the extent necessary for the proper presentation of the claim.

(4) Any employee or member of the department who violates any provision of this section shall

be fined not less than $20 or more than $200 or shall be imprisoned for not longer than 90 days, or both."

Section 11. Section 39-51-1109, MCA, is amended to read:

"**39-51-1109. Tax appeals -- procedure.** (1) A decision, determination, or redetermination of the department involving an employer-employee relationship or the charging of benefit payments to employers is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must be made in the same manner as prescribed in 39-51-2403 ~~through~~ and 39-51-2405 through 39-51-2410.

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, or other tax-related issues must be issued by the department of revenue as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. The decision is final unless an interested party entitled to notification follows the uniform tax review procedures as prescribed in 15-1-211 and 15-30-257, if applicable."

Section 12. Section 39-51-2403, MCA, is amended to read:

"**39-51-2403. Hearing -- decision of appeals referee.** Upon appeal of a determination or redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by telephone or by videoconference. After the hearing, the appeals referee shall promptly make findings and conclusions and affirm, modify, or reverse the deputy's determination or redetermination. Each interested party must be promptly furnished a copy of the decision and the supporting findings and conclusions. This decision is final unless ~~further review is initiated pursuant to 39-51-2404 within 10 days after notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause~~ an interested party initiates judicial review by filing a petition in the district court within 30 days of the date of the mailing of the referee's decision to the party's last-known address."

Section 13. Section 39-51-2405, MCA, is amended to read:

"**39-51-2405. Prompt payment of claims.** (1) Notwithstanding any provision in 39-51-2402 ~~or 39-51-2404~~, benefits ~~shall~~ must be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court ~~under 39-51-2404~~ upon the issuance of ~~such~~ the determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review ~~that is provided with respect thereto in 39-51-2404~~, as the case may be, or the pendency of any ~~such~~ application, filing, or petition, unless and until ~~such~~ the determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits ~~shall~~ must be paid or denied for weeks of unemployment ~~thereafter~~ in accordance with ~~such~~ the modifying or reversing redetermination or decision.

(2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, ~~such~~ the benefits ~~shall~~ must be paid promptly regardless of any further appeal or the disposition of ~~such~~ the appeal and ~~no~~ an injunction, supersedeas, stay, or other writ or process suspending the payment of ~~such~~ benefits ~~shall~~ may not be issued by the board or any court. Benefits ~~shall~~ may not be paid for any weeks of unemployment involved in ~~such~~ the modification or reversal that begins after ~~such~~ the final decision."

Section 14. Section 39-51-2405, MCA, is amended to read:

"**39-51-2405. Prompt payment of claims.** (1) Notwithstanding any provision in 39-51-2402 ~~or 39-51-2404~~, benefits ~~shall~~ must be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee~~, the board,~~ or a reviewing court ~~under 39-51-2404~~ upon the issuance of ~~such~~ the determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review ~~that is provided with respect thereto in 39-51-2404~~, as the case may be, or the pendency of any ~~such~~ application, filing, or petition, unless and until ~~such~~ the determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits ~~shall~~ must be paid or denied for weeks of unemployment ~~thereafter~~ in accordance with ~~such~~ the modifying or reversing redetermination or decision.

(2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by

an appeals referee ~~or by the board~~ or if a decision of an appeals referee allowing benefits is affirmed in any amount ~~by the board~~, ~~such~~ the benefits ~~shall~~ must be paid promptly regardless of any further appeal or the disposition of ~~such~~ the appeal and ~~no~~ an injunction, supersedeas, stay, or other writ or process suspending the payment of ~~such~~ the benefits ~~shall~~ may not be issued by ~~the board or~~ any court. Benefits ~~shall~~ may not be paid for any weeks of unemployment involved in ~~such~~ the modification or reversal that begins after ~~such~~ the final decision."

Section 15. Section 39-51-2407, MCA, is amended to read:

"**39-51-2407. Procedure for disputed claims to be prescribed by regulation -- conduct of hearing or appeal.** (1) The manner in which disputed claims must be presented, the reports on disputed claims required from the claimant and from employers, and the conduct of hearings and appeals must be in accordance with regulations prescribed by the department ~~or the board~~ for determining the rights of the parties, whether or not the regulations conform to common law or statutory rules of evidence and other technical rules or procedure.

(2) A hearing or appeal may be conducted by telephone or by videoconference."

Section 16. Section 39-51-2410, MCA, is amended to read:

"**39-51-2410. Finality of ~~board's~~ referee's decision -- judicial review.** (1) Any decision of the ~~board~~ appeals referee in the absence of an appeal, ~~therefrom as herein~~ as provided ~~shall~~ in this section, ~~become~~ becomes final 30 days after the date of notification or mailing ~~thereof~~ of the decision, and judicial review ~~shall be~~ is permitted only after any party claiming to be aggrieved has exhausted all remedies ~~before the board~~. The department is ~~deemed~~ considered to be a party to any judicial action involving any ~~such~~ decision and may be represented in any ~~such~~ action by an attorney employed by the department or, at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the ~~board~~ appeals referee, ~~any~~ a party aggrieved ~~thereby~~ may secure judicial review ~~thereof~~ of the decision by commencing an action in the district court of the county in which ~~said~~ the party resides, and ~~in which action~~ any other party to the proceeding before the ~~board~~ the department or referee ~~shall~~ must be made a defendant in the action. In ~~such~~ the action, a petition, which need not be verified but which ~~shall~~ must state the grounds upon which a review is sought, ~~shall~~ must be served upon the commissioner of labor and industry

and all interested parties in the manner provided in the Montana Rules of Civil Procedure.

(3) The department shall certify and file with ~~said~~ the court all documents and papers and a record of all testimony taken in the matter, together with the ~~board's~~ referee's findings of fact and decision. The ~~board~~ referee may also, in ~~its~~ the referee's discretion, certify to ~~such~~ the court questions of law involved in any decision by ~~it~~ the referee.

(4) Whenever the department seeks review of a decision of the ~~board~~ referee, all interested parties ~~shall~~ must be served with a copy of ~~its~~ the department's petition, together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the ~~board~~ referee as to the facts, if supported by evidence and in the absence of fraud, ~~shall be~~ are conclusive and the jurisdiction of ~~said~~ the court ~~shall~~ must be confined to questions of law. ~~Such~~ The action and the questions ~~so~~ certified ~~shall~~ must be heard in a summary manner and ~~shall~~ must be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It ~~shall~~ is not ~~be~~ necessary in any judicial proceeding under this section to enter exceptions to the rulings of the ~~board~~ referee, and ~~no~~ bond ~~shall be~~ is not required for entering ~~such~~ an appeal. Upon the final determination of ~~such~~ the judicial proceeding, the department shall enter an order in accordance with ~~such~~ the determination."

Section 17. Section 39-51-3101, MCA, is amended to read:

"**39-51-3101. Protection against self-incrimination.** ~~No~~ A person ~~shall~~ may not be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department ~~or board~~, the ~~chairman~~ presiding officer of an appeal tribunal, or any ~~duly~~ authorized representative of either of them or in obedience to the subpoena of the department ~~or board~~ or any member ~~thereof~~ of the tribunal or any ~~duly~~ authorized representative of the department in any cause or proceeding before the department ~~or board~~ on the ground that the testimony or evidence, documentary or otherwise, required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture~~,~~. ~~but no~~ However, an individual ~~shall~~ may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning

which ~~he~~ the individual is compelled, after having claimed ~~his~~ a privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that ~~such~~ the individual ~~so~~ testifying ~~shall~~ may not be exempt from prosecution and punishment for perjury committed in ~~so~~ testifying."

Section 18. Section 39-51-3104, MCA, is amended to read:

"**39-51-3104. Limitation of fees in claim for benefits -- penalty for violation.** (1) ~~No~~ An individual claiming benefits ~~shall~~ may not be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by any court or any officer ~~thereof~~ of the court.

(2) ~~Any~~ An individual claiming benefits in any proceeding before ~~the chairman of an appeal tribunal or~~ the department or its representatives~~, the board,~~ or a court may be represented by counsel or other ~~duly~~ authorized agent, but ~~no such~~ the counsel or agents ~~shall either~~ may not charge or receive for ~~such~~ the services more than an amount approved by the department ~~or board~~.

(3) ~~Any~~ A person who violates any provision of this section shall, for each ~~such~~ offense, be fined not more than $500 or imprisoned for not more than 6 months or both."

Section 19. Section 39-71-304, MCA, is amended to read:

"**39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal -- subpoenas.** (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any ~~duly~~ authorized employee ~~thereof~~ of the department for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and ~~such~~ other information ~~as~~ that may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for ~~such~~ inspection ~~shall~~ will subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a ~~civil~~ workers' compensation court action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects as may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the

department may apply to ~~a district~~ the workers' compensation court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court."

Section 20. Section 39-71-315, MCA, is amended to read:

"**39-71-315. Prohibited actions -- penalty.** (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. Penalties collected pursuant to this section must be paid into the state general fund. The workers' compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 21. Section 39-71-316, MCA, is amended to read:

"**39-71-316. Filing true claim -- obtaining benefits through deception or other fraudulent means.** (1) A person filing a claim under ~~this chapter or~~ chapter 72 or this chapter ~~of this title~~, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) (a) A person who obtains or assists in obtaining benefits to which the person is not entitled or who obtains or assists another person in obtaining benefits to which the other person is not entitled under ~~this chapter or~~ chapter 72 or this chapter ~~of this title~~ is guilty of theft and may be prosecuted under 45-6-301. A county attorney or the attorney general may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits,

permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.

(b) As used in subsection (2)(a), "person" includes but is not limited to an employee, employer, insurer, or medical service provider.

(3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount paid by an insurer on the false claim, provided that the amount does not exceed $50,000. If upon demand of the department the person refuses to pay the fine, the department may ~~institute suit~~ petition the workers' compensation court to collect the money owed.

(b) The department shall:

(i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and

(ii) forward any surplus money to the department of justice. The forwarded money must be used exclusively for the staffing and operation of the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under 45-6-301(5).

(4) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of chapter 72 or this chapter."

Section 22. Section 39-71-317, MCA, is amended to read:

"**39-71-317. Employer not to terminate worker for filing claim -- preference -- jurisdiction over dispute.** (1) An employer may not use as grounds for terminating a worker the filing of a claim under ~~this chapter or~~ chapter 72 ~~of this title~~ or this chapter. The district court has exclusive jurisdiction over disputes concerning the grounds for termination under this section.

(2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

(3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.

(4) The ~~department and~~ workers' compensation court ~~do not have~~ has exclusive jurisdiction to administer or resolve a dispute concerning the reemployment preference under this section. ~~Exclusive jurisdiction is with the district court~~ A dispute concerning the reemployment preference is not subject to mediation or a contested case hearing."

Section 23. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesperson performing under a license issued by the board of realty regulation;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except

employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(q)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(q)(iii)(A) or (2)(q)(iii)(B).

(r) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(s) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order.

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There

is a $25 fee for the initial application. Any subsequent application renewal must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995. The renewal application and the $25 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning ~~for review of the decision by an appeals referee in the manner provided for in 39-51-1109~~ the workers' compensation court. ~~An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.~~

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of

the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 24. Section 39-71-415, MCA, is amended to read:

"**39-71-415. Procedure for resolving disputes regarding independent contractor status.** (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee as defined in this chapter, any party may, after mediation pursuant to department rules, petition ~~a department of labor and industry appeals referee for resolution of the dispute in accordance with 39-51-1109 and may appeal from a decision of the appeals referee in the same manner as prescribed in 39-51-2403 and 39-51-2404~~ the workers' compensation court for resolution of the dispute.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee as defined in this chapter, and after mediating pursuant to department rule, either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401."

Section 25. Section 39-71-601, MCA, is amended to read:

"**39-71-601. Statute of limitation on presentment of claim -- waiver.** (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.

(2) The ~~department~~ insurer may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;

(b) latent injury; or

(c) equitable estoppel.

(3) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers' compensation court."

Section 26. Section 39-71-610, MCA, is amended to read:

"**39-71-610. Termination of benefits by insurer -- department order to pay disputed benefits prior to hearing or mediation -- limitation on order -- right of reimbursement.** If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing before the workers' compensation court or prior to mediation, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of ~~a~~ the hearing or mediation. A party may appeal this order to the workers' compensation court. If after a hearing before the workers' compensation court it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for ~~such~~ the payments by the claimant."

Section 27. Section 39-71-613, MCA, is amended to read:

"**39-71-613. Regulation of attorney fees -- forfeiture of fee for noncompliance -- return of fee when claimant received benefits through fraud or deception.** (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The department may regulate the amount of the attorney fees in any workers' compensation case. In regulating the amount of the ~~fee~~ fees, the department shall consider:

(a) the benefits the claimant gained due to the efforts of the attorney;

(b) the time the attorney was required to spend on the case;

(c) the complexity of the case; and

(d) any other relevant matter the department may consider appropriate.

(3) An attorney who violates a provision of this section, a rule adopted under this section, or an order fixing attorney fees under this section forfeits the right to any ~~fee~~ fees that the attorney collected or was entitled to collect.

(4) If, after an attorney receives attorney fees and costs assessed against an insurer, the claimant is convicted of having obtained benefits through fraud or deception, the attorney fees and costs for obtaining the benefits must be returned to the insurer by the attorney.

(5) A dispute concerning the forfeiture or return of attorney fees is considered a dispute for which the workers' compensation court has original jurisdiction and is not subject to mediation or a contested case hearing."

Section 28. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates -- fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of

cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury only if the travel is incurred at the request of the insurer. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition; ~~or~~

(ii) when necessary to monitor the status of a prosthetic device~~.~~; or

~~(g)~~(iii) ~~if~~ when the worker's treating physician believes that ~~palliative or maintenance~~ the care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment~~, the treating physician shall first request approval from the insurer for the treatment. If approval is not granted, the treating physician may request approval from the department for the treatment. The department shall appoint a panel of physicians, including at least one treating physician from the area of specialty in which the injured worker is being treated, pursuant to rules that the department may adopt, to review the proposed treatment and determine its appropriateness~~. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

~~(h)~~(g) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), ~~for the fiscal year beginning July 1, 1997,~~ rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), beginning July 1, 1998, the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered on or after July 1, 1998. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by the insurer or is a visit to a preferred provider as requested by the insurer.

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605."

Section 29. Section 39-71-1032, MCA, is amended to read:

"**39-71-1032. Termination of benefits for noncooperation with rehabilitation provider -- ~~department hearing and~~ appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' written notice to the worker and the department, may terminate any benefits, except medical benefits and the impairment award, that the worker is receiving until the worker cooperates.

(2) ~~The worker may contest the insurer's termination of benefits by filing a written exception to the department within 20 working days after the date of the 14-day notice. The worker or insurer may request a hearing before the department. The department shall hold a hearing within 30 days of receipt of the request. The department shall issue an order within 15 days of the hearing~~ If the worker disputes the termination of benefits, the worker may, after mediation pursuant to department rule, petition the

workers' compensation court for resolution of the dispute.

~~(3) If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.~~

~~(4) Within 30 days after the department mails its order to the party's last known address, a party may appeal to the workers' compensation court.~~"

Section 30. Section 39-72-403, MCA, is amended to read:

"**39-72-403. Time when claims must be presented.** (1) When a claimant seeks benefits under this chapter, the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The ~~department~~ insurer may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

(3) Any dispute regarding a claim filing time is considered a dispute that, after mediation pursuant to department rule, is subject to jurisdiction of the workers' compensation court."

Section 31. Section 39-72-601, MCA, is amended to read:

"**39-72-601. Medical ~~panel~~ evaluators.** (1) The department shall develop a list of physicians to serve ~~on the~~ as occupational disease medical ~~panel~~ evaluators. The list may include physicians nominated by the board of medical examiners. ~~A physician on the panel~~ An evaluator must be certified by the physician's specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department shall select ~~a panel physician~~ an evaluator to examine a claimant, as required. ~~The department shall appoint, as required, a physician as the presiding officer.~~"

Section 32. Section 39-72-602, MCA, is amended to read:

"**39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not accepted liability.** (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The department shall direct the claimant to ~~a member of the medical panel~~ an evaluator on the list of physicians for an examination. The ~~panel member~~ evaluator shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. In the case of a fatality, the evaluator shall examine the records to determine if the death was caused by an occupational disease. The ~~panel member~~ evaluator shall submit a report of the ~~member's~~ findings to the department.

(b) ~~Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of the member's findings to the department. The medical panel member may, in order to reach a conclusion, consult with the claimant's attending physician. The reports from the two examining physicians must be sent by the department to the presiding officer of the panel. The presiding officer shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease~~ Within 7 working days of receipt, the department shall mail the report of the evaluator's findings to the insurer and claimant.

(c) ~~(i) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician.~~

~~(ii) If a second examination is requested, the department shall issue its order based on the report of the presiding officer. If the panel presiding officer has examined the claimant, the department shall appoint another presiding officer~~ Upon receipt of the report, if a dispute exists over initial compensability of an occupational disease, it is considered a dispute that, after mediation pursuant to department rule,

is subject to the jurisdiction of the workers' compensation court."

Section 33. Section 39-72-607, MCA, is amended to read:

"**39-72-607. Periodic medical examinations.** (1) Upon the request of the department or the insurer, each employee entitled to compensation shall submit to a medical examination from time to time by a physician designated by the department who is ~~a member of the appropriate medical panel~~ an evaluator on the department's list of physicians. The examination ~~shall~~ must be at a place reasonably convenient for the employee.

(2) The order directing the examination ~~shall~~ must fix a time and place having regard to the convenience of the employee, ~~his~~ the employee's physical condition, and ~~his~~ the employee's ability to attend. The employee and any other party in interest may have a physician present at the examination if the physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, ~~his~~ the employee's right to compensation is suspended until the examination has been made, and ~~no~~ compensation is not payable during or for the period of suspension.

(4) A physician who makes or is present at the examination may be required to testify as to the result ~~thereof~~ of the examination."

Section 34. Section 39-72-608, MCA, is amended to read:

"**39-72-608. Payment of medical examination, report, and autopsy expenses.** The expense of the ~~first~~ medical examination and report, as provided in 39-72-602, must be ~~borne~~ paid by the insurer. ~~The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination.~~ The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be ~~borne~~ paid by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be ~~borne~~ paid by the party requesting the autopsy. When the occupational disease causes death, the expense of any examinations and reports, as provided in 39-72-605, must be ~~borne~~ paid by the party requesting the examination."

NEW SECTION. **Section 35. Repealer.** Sections 2-15-1704, 39-3-217, 39-51-310, 39-51-2404, 39-72-609, 39-72-610, 39-72-611, 39-72-612, and 39-72-613, MCA, are repealed.

NEW SECTION. **Section 36. Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 39, chapter 51, part 1, and the provisions of Title 39, chapter 51, part 1, apply to [section 7].

NEW SECTION. **Section 37. Effective dates.** (1) [Sections 1 through 7, 11 through 13, 19 through 36, and 38 through 40 and this section] are effective on passage and approval.

(2) [Sections 8 through 10 and 14 through 18] are effective July 1, 1999.

NEW SECTION. **Section 38. Applicability.** (1) [Sections 3 and 5] apply to claims filed on or after [the effective date of sections 3 and 5].

(2) [Section 12] applies to appeals filed on or after [the effective date of section 12].

NEW SECTION. **Section 39. Retroactive applicability.** (1) [Sections 23 through 26, 28, and 29] apply retroactively, within the meaning of 1-2-109, to claims for injuries occurring before [the effective date of sections 23 through 26, 28, and 29] unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

(2) [Sections 30 through 34] apply retroactively, within the meaning of 1-2-109, to occupational diseases occurring on or after [the effective date of sections 30 through 34].

NEW SECTION. **Section 40. Termination.** [Section 13] terminates June 30, 1999.

- END -

HOUSE

BUSINESS AND LABOR

CHAIR: Simon, Bruce

VICE CHAIR: Pavlovich, Bob
Sliter, Paul

MEMBERS:

Barnett, Joe	Bitney, Rod
Bookout-Reinicke, Sylvia	Brown, Roy
Ewer, David	Juneau, Carol
Krenzler, Billie	Lawson, Bob
Masolo, Gay Ann	Matthews, Gary
McKenney, Joe	Squires, Carolyn
Stovall, Jay	Trexler, Cliff
Tuss, Carley	

SECRETARY: O'Reilly, Pati

LEGISLATIVE STAFF: Maly, Stephen

HB 553 SPONSOR: Thomas, Bill SHORT TITLE: Change landscape architecture to a practice act
REFERRED ON: 02/08/1999 HEARD ON: 02/12/1999
EXECUTIVE ACTION: 02/13/1999 Bill Passed as Amended -- VOTE: 11 - 7
FINAL DISPOSITION 02/17/1999 (H) 2nd Reading Pass Motion Failed; Vote: 31 - 68

HB 556 SPONSOR: Ewer, David SHORT TITLE: Prohibit safety awards for no work comp claims
REFERRED ON: 02/08/1999 HEARD ON: 02/11/1999
TABLED ON: 02/12/1999
FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

HB 557 SPONSOR: Ewer, David SHORT TITLE: Medical privacy for work comp claims
REFERRED ON: 02/08/1999 HEARD ON: 02/12/1999
EXECUTIVE ACTION: 02/13/1999 Bill Passed as Amended -- VOTE: 18 - 0
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 558 SPONSOR: Bitney, Rod SHORT TITLE: Clarify which persons may engage in the consumer loan business
REFERRED ON: 02/08/1999 HEARD ON: 02/11/1999
EXECUTIVE ACTION: 02/12/1999 Bill Passed -- VOTE: 18 - 0
FINAL DISPOSITION 04/07/1999 Chapter Number Assigned

HB 572 SPONSOR: Squires, Carolyn SHORT TITLE: Revise certain unemployment insurance laws
REFERRED ON: 02/09/1999 HEARD ON: 02/12/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 10 - 8
FINAL DISPOSITION 02/22/1999 (H) 2nd Reading Pass Motion Failed; Vote: 45 - 53

HB 581 SPONSOR: Cobb, John SHORT TITLE: Generally revise the Montana small business purchasing act
REFERRED ON: 02/10/1999 HEARD ON: 02/12/1999
EXECUTIVE ACTION: 02/13/1999 Bill Passed as Amended -- VOTE: 18 - 0
FINAL DISPOSITION 04/07/1999 Chapter Number Assigned

HB 592 SPONSOR: Hibbard, Chase SHORT TITLE: Revise employment laws
REFERRED ON: 02/11/1999 HEARD ON: 02/16/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 18 - 0
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

AUGUST 2000

THE FOLLOWING MINUTES WERE REPORTED BY THE HISTORICAL SOCIETY ARCHIVES AS BEING ERASED FROM THE TAPES AND ARE NO LONGER AVAILABLE FROM ANY SOURCE.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 16, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 603, HB 604, HB 611,HB 598, HB 624,HB 618, HB 615, HB 598, HB 615, HB 592, 2/12/1999
Executive Action: HB 355, HB 598

HEARING ON HB 592

Opening Statement by Sponsor: Rep. Hibbard, HD 54 introduced HN 592
{Tape : 1; Side : A; Approx. Time Counter : 0 - 121}

Proponents' Testimony: Tom Snyder, Montana Public Employees Assn.
{Tape : 1; Side : A; Approx. Time Counter : 121 - 130}

Chris Gallus. Montana Chamber of Commerce
{Tape : 1; Side : A; Approx. Time Counter : 130 - 152}

Frank Braun, Billings
{Tape : 1; Side : A; Approx. Time Counter : 152 - 196}

John Andrews, Dept. of Labor
{Tape : 1; Side : A; Approx. Time Counter : 196 - 228}

Jerry Driscoll, MT State Building Trades
{Tape : 1; Side : A; Approx. Time Counter : 228 - 257}

Nancy Butler, State Fund
{Tape : 1; Side : A; Approx. Time Counter : 257 - 262}

Jacqueline Lenmark, American Insurance Assn.
{Tape : 1; Side : A; Approx. Time Counter : 262 - 271}

Opponents' Testimony: Joe Theis, Labor Appeal Board EXHIBIT(1)
{Tape : 1; Side : A; Approx. Time Counter : 271 - 300}

Don Judge, AFL-CIO
{Tape : 1; Side : A; Approx. Time Counter : 300 - 362}

Claris Neill, attorney from Billings
{Tape : 1; Side : A; Approx. Time Counter : 362 - 461}

Questions from Committee Members and Responses: Reps. Ewer and Simon questions witnesses.
{Tape : 1; Side : A; Approx. Time Counter : 461 - 500}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 31}

Closing by Sponsor: Rep. Hibbard closed HB 592
{Tape : 1; Side : B; Approx. Time Counter : 31 - 83}

Motion/Vote: REP. SQUIRES moved that HB 572 DO PASS AS AMENDED. Motion carried 10-8 with Barnett, Bitney, Brown, Lawson, Masolo, McKenney, Simon, and Trexler voting no.
{Tape : 1; Side : A; Approx. Time Counter : 483 - 500}

EXECUTIVE ACTION ON HB 592

Motion: REP. PAVLOVICH moved that HB 592 DO PASS.
{Tape : 1; Side : B; Approx. Time Counter : 0 - 25}

Motion/Vote: REP. PAVLOVICH moved that HB 592 BE AMENDED. Motion carried unanimously.
{Tape : 1; Side : B; Approx. Time Counter : 25 - 49}

Motion/Vote: REP. EWER moved that HB 592 BE AMENDED. Motion carried 17-1 with Sliter voting no.
{Tape : 1; Side : B; Approx. Time Counter : 49 - 107}

Motion: REP. PAVLOVICH moved that HB 592 BE AMENDED. Motion failed on a voice vote.
{Tape : 1; Side : B; Approx. Time Counter : 107 - 152}

Motion/Vote: REP. TUSS moved that HB 506 DO PASS AS AMENDED. Motion carried unanimously.
{Tape : 1; Side : B; Approx. Time Counter : 152 - 155}

EXECUTIVE ACTION ON HB 615

Motion/Vote: REP. PAVLOVICH moved that HB 615 DO PASS. Motion carried unanimously.
{Tape : 1; Side : B; Approx. Time Counter : 155 - 170}

EXECUTIVE ACTION ON HB 618

Motion/Vote: REP. PAVLOVICH moved that HB 618 BE TABLED. Motion carried 14-4 with Krenzler, Simon, Squires, and Tuss voting no.
{Tape : 1; Side : B; Approx. Time Counter : 170 - 233}

EXECUTIVE ACTION ON HB 624

Motion: REP. SLITER moved that HB 624 DO PASS.
{Tape : 1; Side : B; Approx. Time Counter : 233 - 265}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 2/17/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney		X	
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** report that **House Bill 592** (first reading copy -- white) **do pass as amended.**

Signed: *Representative Bruce Simon, Chair*

And, that such amendments read:

1. Title, lines 9 through 11.
Following: "WAGES;" on line 9
Strike: the remainder of line 9 through "COURT;" on line 11

2. Title, line 20.
Strike: "39-51-201,"

3. Title, line 21.
Strike: "39-51-301, 39-51-603," "39-51-2403, 39-51-2405, 39-51-2407, 39-51-2410, 39-51-3101,"

4. Title, line 22.
Strike: "39-51-3104,"

5. Title, line 24.
Following: "SECTIONS"
Strike: "2-15-1704,"

6. Title, line 25.
Strike: "EFFECTIVE DATES,"
Insert: "AN IMMEDIATE EFFECTIVE DATE AND AN"

Committee Vote:
Yes 18, No 0.

400825SC.ham

9AM 2-18

7. Title, line 26.
Following: "APPLICABILITY"
Strike: "DATES, AND A TERMINATION"

8. Page 6, line 3 through page 12, line 1.
Strike: sections 8, 9, and 10 in their entirety
Renumber: subsequent sections

9. Page 12, line 19 through page 16, line 14.
Strike: sections 12 through 18 in their entirety
Renumber: subsequent sections

10. Page 31, line 29.
Strike: "2-15-1704,"

11. Page 32, lines 6 through 12.
Strike: section 37 in its entirety
Insert: "NEW SECTION. **Section 27. Effective date.** [This act] is effective on passage and approval."

12. Page 32, line 10.
Strike: "(1)"

13. Page 32, line 11.
Strike: "sections 3 and 5"
Insert: "this act"

14. Page 32, line 12.
Strike: subsection (2) in its entirety

15. Page 32, line 18.
Strike: "30 through 34"
Insert: "20 through 24"

16. Page 32, line 19.
Following: "occurring"
Strike: "on or after"
Insert: "before"

Strike: "sections 30 through 34"
Insert: "this act"
Following: "34]"
Insert: "unless a party elects, after notification by the department of labor and industry, to remain in the contested case process"

17. Page 32, line 21.
Strike: section 40 in its entirety

- END -

SENATE

LABOR AND EMPLOYMENT RELATIONS

CHAIR: Keating, Tom **VICE CHAIR: Thomas, Fred**

MEMBERS:

Bartlett, Sue	**Berry, Dale**
Cocchiarella, Vicki	**Ellis, Alvin**
Keenan, Bob	**McNutt, Walter**
Wilson, Bill	

SECRETARY: Clancy, Gilda

LEGISLATIVE STAFF: McClure, Eddye

HB 592 SPONSOR: Hibbard, Chase SHORT TITLE: Revise employment laws
REFERRED ON: 02/23/1999 HEARD ON: 03/04/1999
EXECUTIVE ACTION: 03/10/1999 Bill Concurred as Amended -- VOTE: 8 - 1
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HJ 16 SPONSOR: Ewer, David SHORT TITLE: To recognize, respect, and protect the right of workers to organize unions
REFERRED ON: 02/23/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 5 - 4
FINAL DISPOSITION 04/22/1999 (H) Died in Process

SB 21 SPONSOR: Shea, Debbie SHORT TITLE: Transfer occupational health administration to Department of Labor
BY REQUEST OF: Department Of Labor And Industry
REFERRED ON: 12/22/1998 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/15/1999 Bill Passed -- VOTE: 7 - 0
FINAL DISPOSITION 02/20/1999 Chapter Number Assigned

SB 67 SPONSOR: Mahlum, Dale SHORT TITLE: Clarify marital status for employment discrimination purposes
REFERRED ON: 01/04/1999 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 7 - 2
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 68 SPONSOR: Mahlum, Dale SHORT TITLE: Revise certain statutes relating to the State Compensation Insurance Fund
BY REQUEST OF: State Compensation Insurance Fund
REFERRED ON: 01/07/1999 HEARD ON: 01/19/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 9 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

SB 77 SPONSOR: Keenan, Bob SHORT TITLE: Revise applicability of prevailing wage on competitive bid public contracts
BY REQUEST OF: Department Of Public Health And Human Services
REFERRED ON: 01/04/1999 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed -- VOTE: 6 - 3
FINAL DISPOSITION 02/20/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **SEN. DALE BERRY**, on March 4, 1999 at 3:02 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 200, HB 592, 2/24/1999
Executive Action: HB 200

Closing by Sponsor:

REP. COBB asked the Committee to concur with this bill.

{Tape : 1; Side : A; Approx. Time Counter :8 - 42}

HEARING ON HB 592

Sponsor: **CHASE HIBBARD, HD 54, Helena**

Proponents: **John Andrew, Department of Labor & Industry**
Pat Sheehey, Attorney, Billings
Nancy Butler, State Fund
Tom Schneider, Montana Public Employee's Association
Jerry Keck, Acting Administrator, Employment Relations Division, Department of Labor & Industry
George Wood, Executive Secretary, Montana Self-Insurer's Association
Jack Holstrom, Montana Association of Counties
Chris Gallus, Montana Chamber of Commerce
Riley Johnson, National Federation of Independent Business
Pat Haffey, Commissioner, Department of Labor & Industry

Opponents: **Don Judge, Montana State AFL-CIO**
Al Smith, Montana Trial Lawyer's Association

Informal Testimony: **Judge Mike McCarter, Montana Workers' Compensation Judge**

Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 54, Helena, conveyed HB 592 is a result of the HJR 10 study committee over the interim. The specific accomplishments of that committee has already been presented earlier in the Session.

In the last Session, HJR 10 directed the Department of Labor to put together a group over the interim to try to find ways to streamline the manner that employer-employee disputes are handled. One subject was Workers' Compensation. This was a cumbersome, time-consuming process. They had a group of 12

people and met ten times in all-day meetings, and approximately 800 man hours were spent on that project. In the group both public and private employers and employees were represented. Throughout the process, they strived to meet five goals. One goal was the importance of mediation in resolving disputes, another was the standardization of process and improving information exchange, the third was follow-ups on progress and success of changes, the fourth was streamlining the entire process, and the fifth was consistency.

REP. HIBBARD believes this bill accomplishes most of those things, however, there were things in the consensus not included in the bill, but to be implemented by the Department of Labor as it moves forward in this area.

They came out of that committee with six specific Workers' Compensation recommendations overall and 16 specific non-Workers' Compensation recommendations. There are a complicated patchwork of jurisdictions involved in Workers' Compensation. There are matters over which the Department of Labor has original jurisdiction and there are matters over which the District Courts have jurisdiction. They tried to consolidate all those Workers' Compensation items in the Workers' Compensation Court.

In the area of Independent Contractors, they attempted to get the original jurisdiction which was in the Department also to the Workers' Compensation Court. They emphasized mediation in being prerequisite in petitioning the Court in issues relating to compensability and benefits.

The Fiscal Note reflects $138,900 savings which is accruing because of the elimination of three Hearings Officer's positions in the Hearings Bureau, however, this is really a savings which is transferred over to reduce the shortfall in the Workers' Compensation regulatory function. There is a savings by this bill, but it transfers over to Workers' Compensation. There is an additional work load which is added to the Workers' Compensation Court. The Court has already budgeted for that. The Board of Labor Appeals has been amended back in to stay.

Proponents' Testimony:

John Andrew, Department of Labor & Industry, said it is correct the Board of Labor Appeals was restored, but with the narrow

purpose of confining itself to dealing with Unemployment Insurance Benefit cases. One of the recommendations of this work group was that issues which involved Independent Contractors be streamlined to the greatest extent possible. Under current statutes, independent contractor issues can go to the District Court, the Board of Labor Appeals, and the Board of Personnel Appeals.

Judge McCarter showed this Committee a chart previously which took a whole hodge-podge of steps and put them into a very straight-lined procedure. The Independent Contractor part would be taken away from the Board of Labor Appeals and those Independent Contractor issues would go through a simple unit review so the Department is consistent. Ultimately, those issues would be decided by the Workers' Compensation Court. That is consistent with the recommendations of the work group.

One of the major portions of this bill deals with benefit issues in the Workers' Compensation arena. This legislation says all benefit issues will be treated in the same fashion with the emphasis being on mediation then judication by the Workers' Compensation Court as opposed to going through a contested case proceedings. There are certain matters now which are in the hands of the District Court which deal with Workers' Compensation and they now will be placed in the hands of the Workers' Compensation Judge.

The recommendations also contemplate consistent processes by the Department so that in all these various phases of employment law, we will look at an investigative phase, followed by a mediation phase, followed by a hearings process if necessary, then followed by the Court system.

Another issue deals with a certain standardization process. Currently, there can be a human rights case which is taking place, a wage claim, and an Independent Contractor issue taking place. It would help, not only to be mediating these things, but to kill all the birds with one stone. If people file these things in a certain time period, it should make it easier to consolidate them. Wage complaints should be filed within 180 days, which is the same time frame for filing an unfair labor practice or a human rights complaint. In doing that, these cases will come together sooner so they are judicated all at one time.

The work group recommended there be a statute of limitations on the filing for wage claims and penalties and that be confined to a two-year or three-year time period in the case of repetitive violations. That is consistent with the current federal standard.

This bill has some real positive benefits and **Mr. Andrew** asked for the Committee's consideration in supporting it.

Pat Sheehey, Attorney, Billings, stated he is a proponent of this bill because it streamlines the process in which worker's claims are judicated. It helps the employer in the insurance industry quickly get their claims through court. In the Workers' Compensation arena, this takes all contested case hearing with have to do with benefit claims, and bring them before the Workers' Compensation Judge, rather than bring them before the Department only to be appealed to the Workers' Compensation Judge and perhaps onto the Montana Supreme Court.

The committee has swept up statutes in the Workers' Compensation area which give original jurisdiction to the Department and they have given that jurisdiction to the Workers' Compensation Court. The only suggestion **Mr. Sheehey** has it that they have missed one statute which is 39-71-204. That statute provides the Department can resend or alter or amend orders which they have previously issued in any particular claim. That jurisdiction still lies with the Department under this bill. It is his suggestion this statute should also be amended so that people who want to get an award or order rescinded or looked at can have it in front of the Workers' Compensation Judge, especially if it has to do with benefits payable. He gave an example of one of his clients who would have benefitted from this suggestion. He would like to see this bill amended to include 39-71-204 and give the Workers' Compensation Court jurisdiction to review previous Department orders.

Nancy Butler, State Fund, said they support the sections of the bill affecting Workers' Compensation. She suggested the Committee take a serious look at **Mr. Sheehey's** suggestion. We are dealing with an order issued by the Department in 1977. The statute in question allows the Department to review their orders, if that person is unhappy with that review, they can appeal to the Workers' Compensation Court. One of the Judge's jobs is to

address an issue on appeal. Otherwise, she supports the bill as proposed.

Tom Schneider, Montana Public Employee's Association, said in this case he more represents the **Montana Board of Personnel Appeals.** He was a member of the HJR 10 committee and he would like to go on record supporting the bill. He would like to go on record supporting the fact the House reinstated the Board of Labor Appeals and feels that should be a legislative decision.

The **Board of Personnel Appeals** was created in 1973 to administer appeals classifications and the State Collective Bargaining Act. Sometime in the late 1980s, the function of appealing wage claims was added to the Board. This bill will take that function away and put the **Board of Personnel Appeals** back into its original jurisdiction and **Mr. Schneider** supports that happening.

On line 27 it appears we reduced the time period for filing claims from 18 months to 180 days. But under the current law there really is no time period for filing. This section formally dealt with penalty and a person had to file within 18 months to be entitled to the penalty but there was no date as far as filing. It was unlimited. This bill would allow filing up to 180 days which is consistent with the Human Rights Commission Unfair Labor practices under the Board and the Board grievance procedure for Highway and Fish & Game. On the following page is provided the statute of limitations on wage claims for an employer that has not shown a bad record, the employee may recover for a period of two years. If it is an employer who has shown repeated violations in the law, the recovery period could be up to three years. Those are the basic changes to their section of the bill.

Jerry Keck, Acting Administrator, Employment Relations Division, Department of Labor & Industry, explained he participated in a small employer round table discussion which **REP. HIBBARD** convened during the 1997 Session. He was also a member of HJR 10 work group which brought these proposals. Much of the implementation of this bill was with the Employment Relations Division. They are anxious to go forward with this work and believe it is the best interest of the employers and employees to simplify and consolidate a lot of these functions and they strongly support the bill.

George Wood, Executive Secretary, Montana Self-Insurer's Association, said they arise in support of those portions of the bill which affect them, which are the sections which deal with 39-71 and 39-72. They believe streamlining is a good thing and they have no opinion on the unemployment section as they do not pertain to their members.

Jack Holstrom, Montana Association of Counties, remarked he also worked on the work group which proposed this legislation. He urged the Committee's support of this bill.

Chris Gallus, Attorney, Montana Chamber of Commerce, said he also was a member of the work group. This bill doesn't streamline to the extent they envisioned when they began the process, but they were dealing with a lot of complex laws in different environment. Throughout the Department when those complaints are filed, the right hand will know what the left hand is doing. He urged the Committee's support of this bill.

Riley Johnson, National Federation of Business, said they also stand in support of this bill. One thing this bill does is change the perception of the ability to work through the system. That is very confusing for their people who do not have a lot of time to be traveling and going through mazes.

Pat Haffey, Commissioner, Department of Labor & Industry, alleged they support HB 592 based on serving as a personnel officer for many years. She represents both employees and employers in trying to resolve disputes. It is not comfortable for either party. It is always more costly than they count on, and it is always confusing for them, and quite often nobody wins. She believes the committee who worked on this came up with an excellent bill and she hopes it will be passed.

Opponents' Testimony:

Don Judge, Montana State AFL-CIO, stated they support much of the language in this bill, particularly getting rid of the wage claim duties of the Board of Labor Appeals and focusing on the unemployment aspects of the Board of Labor Appeals. They also believe in streamlining the process to the best extent possible.

He mentioned on page 3, line 30 of the bill, it now requires a wage claim to be filed within 180 days of the delay of payment of wages. The lines above that appear to be striking the 18-month period of time and inserting days are two different sections of law. The 18 months apply to the penalty recoverable. What is not in this law is the fact employees who had a legitimate wage claim, have currently the right to file a wage claim essentially unlimited. Typically anywhere from five to seven years, it is still possible to file a wage claim under current Montana law. That change to 180 days is very significant impact on employees who may have legitimate wage claims. The Department is suggesting this isn't a huge deal, but this is being made for the purpose of standardizing appeals so that if an appeal on a wage claim is being filed and an appeal is being filed by the Human Rights Commission and maybe if an unemployment claim is being filed, they will all try to draw together for the convenience of government. There are cases where employees shouldn't loose out in order to make the government's process more convenient. He gave an example of what could happen. He stated they are suggesting a compromise to 24 months to at least provide an opportunity for deserving employees to recover wages.

Al Smith, Montana Trial Lawyers Association, related they have some concerns with this bill, which is the same as what **Don Judge** raised. At the top of page 4 it limits the amount of wages and penalties that a worker can receive, which is two years prior to the date the claim is filed. Even if the worker filed a claim within 180 days, according to subsection 2 he could potentially loose six months wages.

{Tape : 1; Side : B; Approx. Time Counter :42 - 58} **Mr. Smith** went on to explain on page 29, subsection 2, regarding worker's benefits being terminated because of not cooperating with the rehabilitation provider. If we are looking at streamlining, what has happened with this was there were time lines that if the benefits had been terminated and the worker seeks to have those reinstated, and that worker is suffering a brain injury, that could affect their cognitive abilities. Sometimes people with brain injuries can get belligerent and refuse to cooperate. For those type of people he would like to see the 30-day time line be put back in, so there would be some ability for that worker to get his benefits restored quickly. A 30-day period is reasonable and would be a reasonable way to protect workers.

On page 30, where it refers to the medical panel who deals with occupational disease, they have no concern with an evaluator as a panel taking a look at this, but they believe it would be more fair to the worker, that the claimant would have the ability to select an evaluator from a list of three to five qualified evaluators provided by the Department.

They also supported changes to 39-71-204 suggested by **Mr. Sheehey.** He said we should take advantage of the process now and not wait another two years.

Informational Testimony:

Judge Mike McCarter, Workers' Compensation Judge, said he would be affected by a lot of the changes in this bill. He handed out a summary of HJR 10 **EXHIBIT(1).** He also mentioned the suggestion of a time line for contesting termination of rehabilitation benefits. The 30-day period would work for him.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA asked **Judge McCarter** his opinion on the proposed amendment by **Pat Sheehey.**

Judge McCarter said he wrote a memo when **Mr. Sheehey** brought it to his attention. The situation is similar to re-opening full and final compromise settlements and now the Court has the jurisdiction to do that. It has to be for a good cause. If the claimant were trying to re-open a subrogation order would have to come forward and show good cause for re-opening. He believes it is consistent, but it is up to the legislature if they want to include that.

SEN. THOMAS asked **Judge McCarter** if he were comfortable in handling the changes with his current staff?

Judge McCarter answered he is. They are already doing some re-tooling in anticipation this bill would pass. Part of the work load is offset by the fact some of the appeals coming to the Court won't come as appeals but as original jurisdiction cases, therefore there is a trade-off. In some of those cases it will be quicker and easier to hear those cases. He may have to work a few extra hours, but is comfortable in doing so.

SEN. THOMAS asked if anyone can take a case to Workers' Compensation Court.

Judge McCarter responded we do have those cases where people represent themselves. They have increases over the past couple years, they have seen more of them. They are dealing with them fairly effectively. They make it a non-intimidating process and loosen up on the procedures in the hearing. They also assist claimants who represent themselves so they know what that process is about. He has good staff available to answer procedural questions for them too.

SEN. COCCHIARELLA commented in this process we are relying more and more on mediation. She asked **Jerry Keck** if the Department had some control or training or oversite or way to guarantee that mediation doesn't become a 'split the difference kind of decision'.

Mr. Keck answered they try to hire trained people in the mediation process. They are not an advocate to either party, that is not their role. Their role is trying to ensure both parties have an opportunity to present their position, set forth what they are willing to do and not do, and help them come to a solution both parties will accept.

SEN. COCCHIARELLA asked how he guarantees there is not an erosion of the mediation process over time.

Mr. Keck responded they do not have a built in process to review that over a period of time.

SEN. KEATING asked **Judge McCarter** regarding the current scheme on Independent Contractor cases, it shows the Board of Labor Appeals in the diagram **(EXHIBIT 1)**, then on the proposal the Board of Labor Appeals is not in the stream. Does it show up some place?

Judge McCarter deferred the question to **John Andrew** who answered the Board of Labor Appeals will do the uninsured benefit issues but they will not be involved in the Independent Contractor issues.

Closing by Sponsor:

REP. HIBBARD closed by mentioned there is a technical amendment **EXHIBIT(2)**. He asked the Committee to incorporate that into deliberations. He also asked the Committee carefully inspect the suggestions made. The list could go on and on of little changes which could be made. The committee who helped draft this bill spent over 800 man hours considering all this. He believes they were successful in what they set out to do. This is a very complex area and they came up with a product they felt would streamline the process, make it quicker and more efficient and more cost effective. Given the constraints of the law, this is a very large step.

EXECUTIVE ACTION ON HB 200

Motion/Vote: **SEN. COCCHIARELLA** moved that **HB 200 BE CONCURRED IN. Motion carried unanimously.**

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 3-4-99
BILL NO. HB592

QUICK OVERVIEW

OF

HJR10 RECOMMENDATIONS

INVOLVING
THE

WORKERS' COMPENSATION
COURT

MONTANA WORKERS' COMPENSATION COURT
Introduction

- The Court was established in 1975.

- The Workers' Compensation Court is parallel to district courts:

    - Judge must have same qualifications as a district court judge.
    - The Court has original (trial) jurisdiction over most cases.
    - The Court acts as an appellate court in matters that are initially adjudicated by the Department.
    - The Court can decide constitutional issues.
    - Appeal from the Court is directly to the Supreme Court.
    - The Court has the same powers of contempt and to issue executions on judgments as do district courts.
    - Only connection to Department of Labor is for administrative purposes.

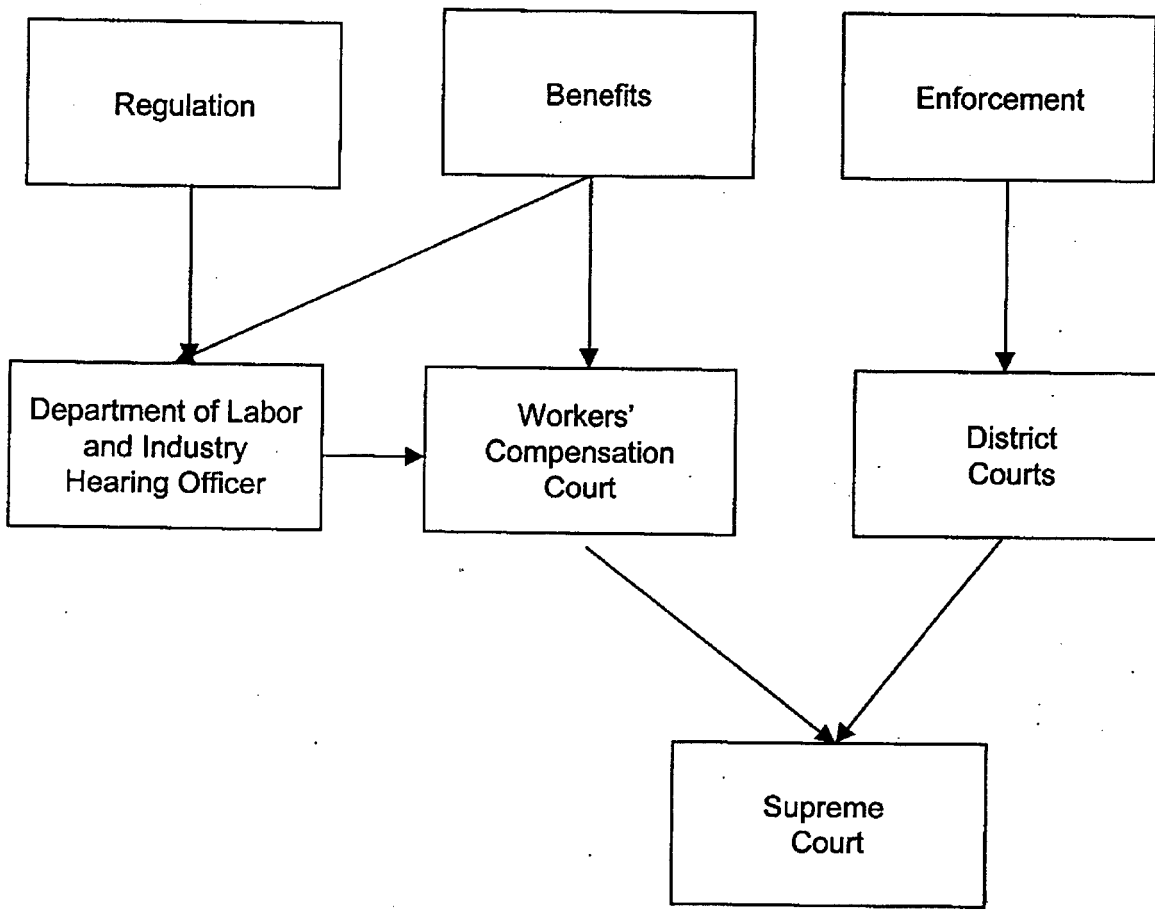
- Advantages of a Workers' Compensation Court:

    - Highly technical and specialized area of the law.
    - Independent tribunal (like a district court).
    - Consistency and uniformity in decisions.
        - One court, one judge.
        - Decisions reported.
    - Reduces litigation.
    - It can address constitutional issues which the Department cannot.
    - It is efficient and quick:
        - 75 days from filing to trial.
        - Ideally, and in most cases, another 45-90 days to decision.
        - It eliminates multiple appeals.

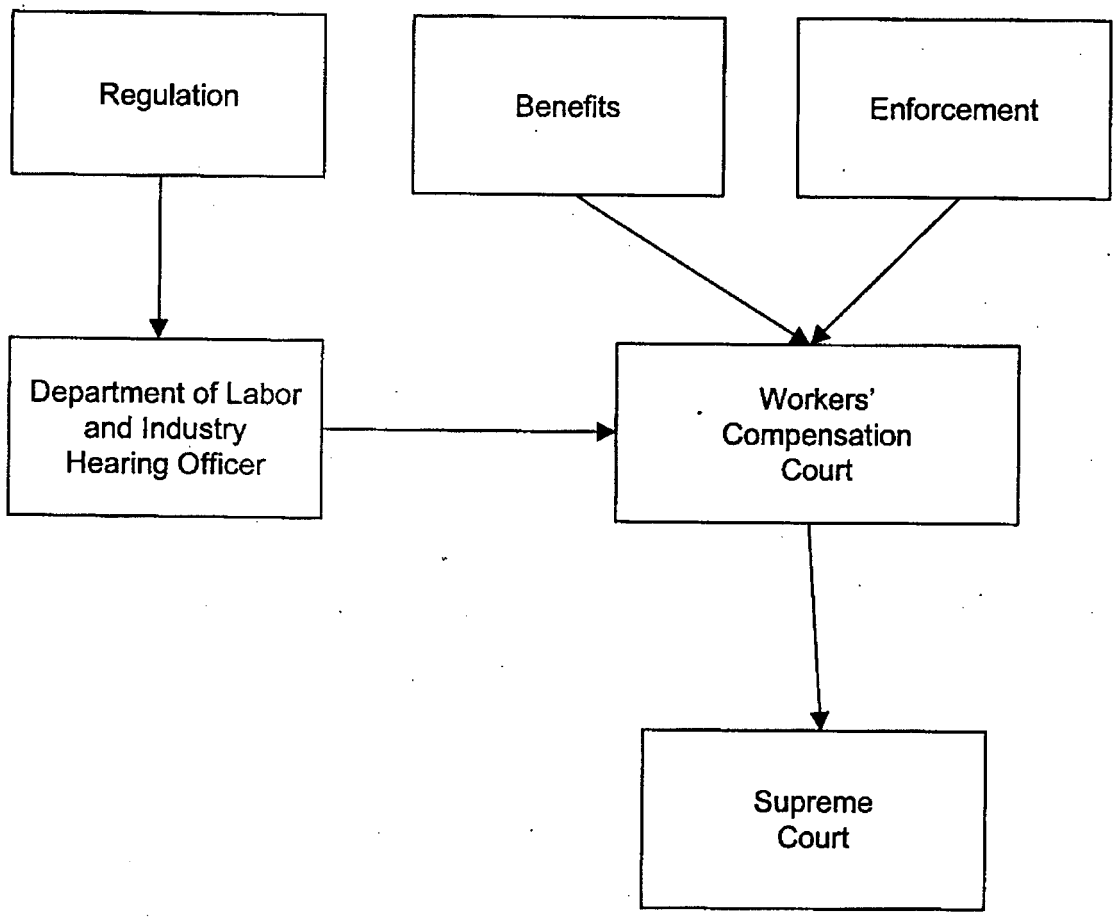
- Satisfaction with the Court:

    - Periodic surveys over past five years indicate little criticism and that attorneys are happy with the Court.
    - I have no sense whatsoever that the Court is controversial or that there is any constituency wishing to eliminate it.
    - HJR10 recommendations indicate satisfaction with Court.

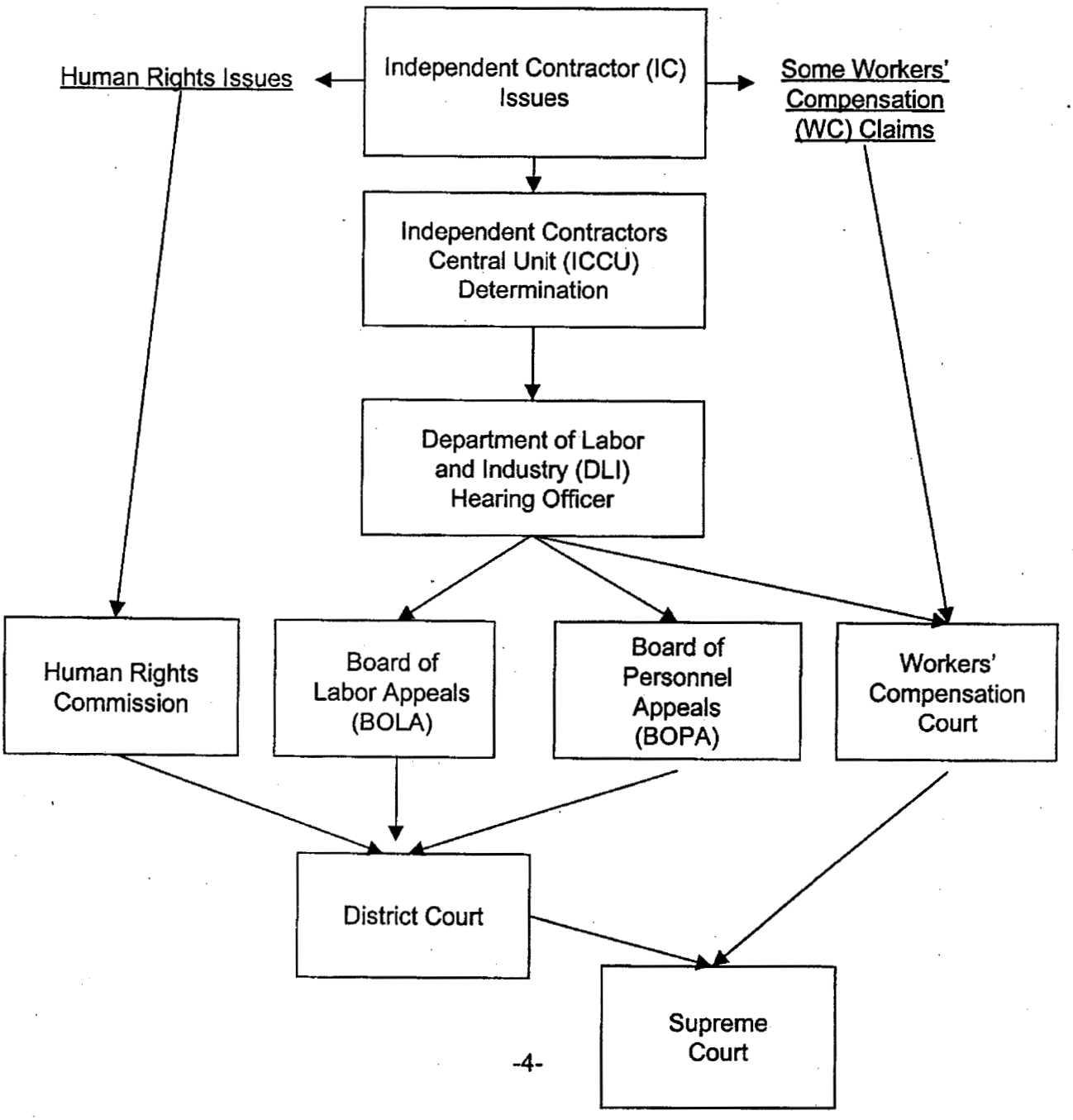
CURRENT JURISDICTION
Workers' Compensation and Occupational Disease Issues



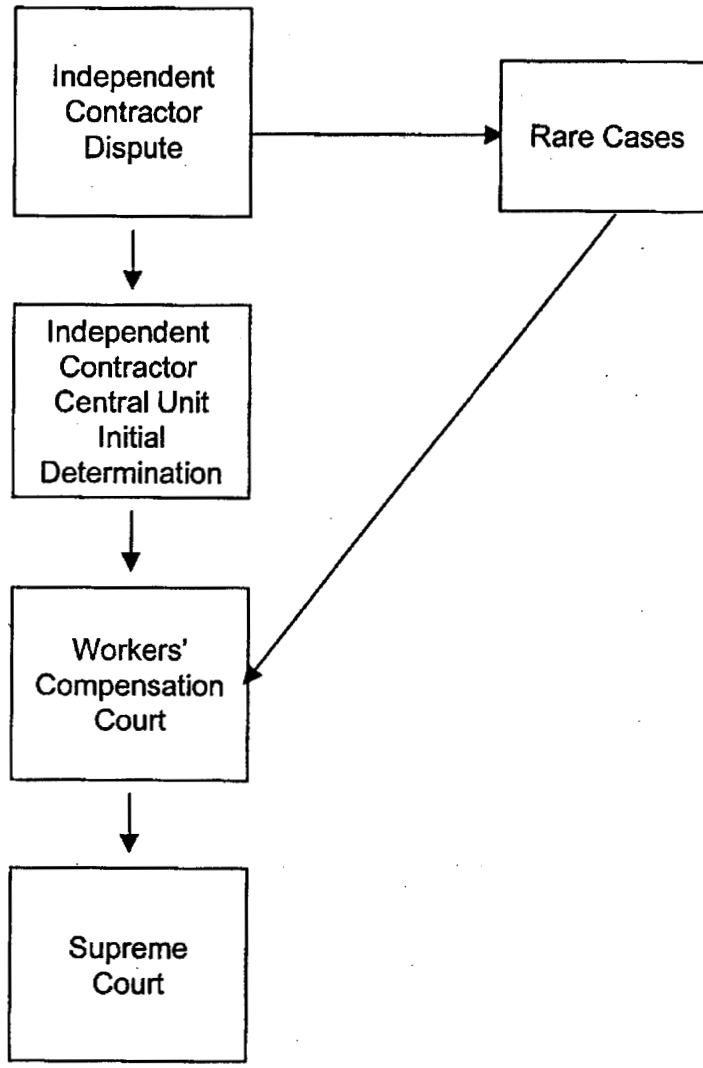
HJR 10 PROPOSED JURISDICTION
Workers' Compensation and Occupational Disease Issues



INDEPENDENT CONTRACTOR CASES
DISPUTE RESOLUTION
Current Scheme


Human Rights Issues
Independent Contractor (IC) Issues
Some Workers' Compensation (WC) Claims
Independent Contractors Central Unit (ICCU) Determination
Department of Labor and Industry (DLI) Hearing Officer
Human Rights Commission
Board of Labor Appeals (BOLA)
Board of Personnel Appeals (BOPA)
Workers' Compensation Court
District Court
Supreme Court

INDEPENDENT CONTRACTOR CASES
Dispute Resolution
HJR 10 Proposal



HJR10 COMMITTEE PROPOSAL FOR ADDITIONS TO THE JURISDICTION OF THE WORKERS' COMPENSATION COURT

- Transfers from Department of Labor & Industry

  The following benefit controversies would be transferred from the Department of Labor and Industry to the Workers' Compensation Court:

  - All occupational disease controversies.
  - Requests to continue benefits pending hearing.
  - Requests for waiver of the statute of limitations for claims.
  - Disputes involving palliative or maintenance care.
  - Forfeiture of attorney fees.
  - Termination of benefits for non-cooperation.

- Transfers from the District Courts

  The following matters presently within the province of the district courts would be transferred to the Workers' Compensation Court:

  - Penalties against employers refusing access to records.
  - Subpoenas for books and records.
  - Penalties against medical providers.
  - Civil penalties for theft of benefits.
  - Disputes involving the two year employment preference.

- Independent Contractor Controversies

  All independent contractor disputes would be transferred to the Workers' Compensation Court.

HJR10 RECOMMENDATIONS
Impacts

Workers' Compensation Court

Assuming the Court maintains its current level funding and staffing, it will be able to absorb the additional caseload.

- No additional personnel are necessary.
- $15,000 additional is needed annually for increased expenditures for Court reporters and travel.
- New cases will be integrated with current work load.
- New cases will be on same fast track as current ones.
- New cases will be heard statewide on same schedule.
- Decisions in new cases will be reported in the same manner as are current decisions.

Department of Labor and Industry

- Eliminates some hearing officers.
- Savings to Department of:
  - FY00 $140,000
  - FY01 $170,000

  Total Savings $310,000

Net Savings: $280,000 over the biennium, $125,000 in FY00 and $155,000 in FY01.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3-4-99
BILL NO. HB592

Amendments to House Bill No. 592
3rd Reading Copy

Requested by Representative Chase Hibbard

For the Senate Labor and Employment Relations Committee

Prepared by Eddye McClure
March 3, 1999 (12:58PM)

1. Page 32, line 8.
Strike: "39-51-310, 39-51-2404,"

- END -

MONTANA SENATE
1999 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 3-4-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	✓		
SEN. DALE BERRY	✓		
SEN. VICKI COCCHIARELLA	✓		
SEN. ALVIN A. ELLIS, JR.	✓		
SEN. BOB KEENAN	✓		
SEN. WALT MC NUTT	✓		
SEN. BILL WILSON	✓		
SEN. FRED THOMAS, VICE CHAIRMAN	✓		
SEN. TOM KEATING, CHAIRMAN	✓		

DATE 3-4-99

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB 200, HB 592

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
John Anderson	444-9019	Dept of Labor Employ	HB 592	✓	
Tom Schneider	442-4600	MSEA	592	✓	
George Wood	(406) 549-8849	Montana Self Insurers Assoc	592	✓ 39-71 & 39-72	
Jerry Keck	(406) 444-1555	Dept. of Labor	592	✓	
Chris J. Gallus	442-2405 x102	MT Chamber	HB592	✓	
Jack Holstrom	442-5209	MT Association of Counties	HB592	✓	
Pat Haffey	444-3299	Labor & Ind	HB 592	✓	
Rules Johnson	443-3797	NFIB	HB 592	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-4-99

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB 200, HB 592

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike McCarter	444-7794	Workers' Compensation Court	592	Here to answer questions	
Eugene Fenderson	442-1441	MSHAC	200 592	L	
Don Judge	442-1708	MT STATE AFL-CIO	HB 592		Amend
Mike Foster	442-4162	MT Contractors' Assoc.	HB 200	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXECUTIVE ACTION ON HB 98

Motion: **SEN. KEENAN** moved that **HB 98 BE CONCURRED IN.**

Motion: **SEN. KEENAN** moved that **THE AMENDMENTS BE ADOPTED EXHIBIT(1).**

Discussion:

SEN. THOMAS explained the amendments in **(EXHIBIT 1).**

Vote: Motion that **THE AMENDMENTS BE ADOPTED carried unanimously.**

Discussion:

SEN. BARTLETT asked **SEN. THOMAS** if he chose to leave the definition of farm and ranch the way it was written in the bill when it originally came in.

SEN. THOMAS answered that is correct.

SEN. ELLIS asked if amendment number five was the Department of Commerce amendment.

SEN. THOMAS responded, "yes", however it is now amendment number four.

Vote: Motion that **HB 98 BE CONCURRED IN AS AMENDED carried 8-1 with SEN. BARTLETT voting no.**

EXECUTIVE ACTION ON HB 592

Motion: **SEN. BARTLETT** moved that **HB 592 BE CONCURRED IN.**

Motion/Vote: **SEN. BARTLETT** moved that **THE AMENDMENT EXHIBIT(2) BE ADOPTED. Motion carried unanimously.**

Discussion:

SEN. COCCHIARELLA explained on the top of page 4, she planned to draft an amendment which would help clarify the issue of what time period is covered when someone files a wage and hour claim. This language seems somewhat unfair. She read Section 3 where it states, "An employee may recover wages and penalties for a period of two years prior to the date in which the claim is filed". If that person had not been paid appropriately, she felt that was unfair. She asked for a sense of what the Committee thinks.

CHAIRMAN KEATING remarked he did not know enough about this to make a decision now, so he asked the Committee to recess the executive action on this until after the bills were heard and they will came back to it and hope there is some informational experts present.

SEN. COCCHIARELLA agreed this would work well.

(THE COMMITTEE RECESSED FROM THIS EXECUTIVE ACTION UNTIL LATER IN THIS MEETING.)

{Tape : 1; Side : A; Approx. Time Counter : 11 - 20}

HEARING ON HB 557

Sponsor: **REP. DAVID EWER, HD 53, Helena**

Proponents: **Nancy Butler, State Fund**
George Wood, Montana Self-Insurer's Association
Don Judge, AFL-CIO
Todd Thun, Montana Nurses Association
Christiana Schweitzer, Montana Trial Lawyer's Association

Opponents: **None.**

Opening Statement by Sponsor:

REP. DAVID EWER, HD 53, Helena, claimed the intention of this bill is to make the information which insurance companies ask for is pertinent to the Workers' Compensation injury. He handed out an example of 'Authorization To Release Health Care Information'

stated he is a subcontractor, and a prime contractor in many cases. His agreements with any subcontractors does not include this type of language which would not allow them to file a lien on any project. If he had $100,000 agreement with a general contractor and his first pay request was $20,000, if he paid $20,000, along with that he would get a partial lien release waiver. They are asking for that added protection that if they don't get paid and get a bad contractor, there is some recourse for collection.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. SOMERVILLE remarked we need to help the subcontractors out. Not all subcontractors have a large enough organization to have their own attorney and to have an individual who has been 20 years in the state government to understand how to handle contracts and strike those clauses out.

EXECUTIVE ACTION ON HB 514

Motion/Vote: **SEN. ELLIS moved** that **HB 514 BE CONCURRED IN. Motion carried unanimously.**

{Tape : 2; Side : B; Approx. Time Counter : 91 - 115}

EXECUTIVE ACTION ON HB 592

Discussion:

SEN. COCCHIARELLA asked **John Andrew, Department of Labor,** to provide information on this bill.

Mr. Andrew explained he read through the recommendations of the work groups. They concluded by stating the work group recommends recovery under Montana law be the same as under Federal law. It is his understanding as this bill is drafted now, the recovery for the two and three year time period would be the same as under the Federal law and that two years' recovery would begin on the date the claim was filed as exists under Federal law. If it is a

three year violation, the recovery date would go back three years from the date the claim was filed. Essentially, the filing of a claim with the Department of Labor is the same as filing a complaint in court.

SEN. COCCHIARELLA asked **Mr. Andrew** if he would explain to the Committee what her amendment would do. **(EXHIBIT 2)**

Mr. Andrew stated in talking with Department attorneys, if the word 'accrued' is used in there, the accrual is the date the employee quit working for the employer. Then the recovery would be two years prior to the date the employee quit working or three years prior to the date the employee quit working as opposed to when the claim was filed. If 'accrued' were used, it would be a different standard than exists under the federal law now. The claim filing date is now used.

CHAIRMAN KEATING asked if the accrued period was shorter than the claim period in filing the of the claim.

Mr. Andrew responded it would be the opposite, the accrued period would allow for a longer recovery than would be the claim filed.

CHAIRMAN KEATING stated the accrued would begin prior in time than the filing of a claim.

Mr. Andrew answered that is correct.

CHAIRMAN KEATING said if they wait five months and then file the claim, the claim would give them two years, whereas the accrued time will only give 18 months.

Mr. Andrew explained the accrued would begin the day the employee quit. He would only be able to recover two years prior to that. There is a lesser recovery under this than there would be under **SEN. COCCHIARELLA'S** amendment.

SEN. BARTLETT stated not all the wage claims are filed by people who leave their employment.

Mr. Andrew remarked it is very rare that we ever see that. When that occurs it is usually a prevailing wage job when the Department is investigating an employer for non-compliance. In

that case, when the Department sends a letter out to the contractor saying they are investigating, that stops the running of the statute for all employees on that job. It is very rare to see an individual still working for an employer who chooses to file a wage claim. Under that situation, when they file the claim they would be entitled to recovery for two years prior to the date they filed the claim.

SEN. BARTLETT expressed one of the things they had tried to do in HJR 10 working group was to perform some procedures in various employment related processes.

CHAIRMAN KEATING maintained in this case it was the consensus of the Committee to stay with Federal standards.

Mr. Andrew remarked for clarification there is no standard in the Federal law which says a claim must be filed within 180 days. The intent of the Committee was to say if things get filed in that time period, there is a greater likelihood those disputes will be resolved in one common form as opposed to getting drug out. Even if they don't file a wage claim within 180 days, they could still file a claim in court. If they file the claim in court, the clock has been ticking on the claim under Federal law. So they are losing recovery.

SEN. COCCHIARELLA related what this bill is doing is going from no statute of limitations for filing and no limit on recovery time, to a statute of limitations of 180 days for filing. Also, after the claim is filed the claimant can only recover two years even if it has been 180 days, the claimant may only recover six months even though he might have gotten the shaft for ten years.

Mr. Andrew explained right now, if the claim is filed with the Department of Labor, the only thing they can recover for minimum wage and overtime under the Fair Labor Standards Act is what is in that law. We cannot recover any farther back than that. Right now, under Montana law, there is no time period for when those people can file their claim and there is no limit on the recovery.

SEN. BARTLETT stated as part of the working group, she did not understand this and is wondering if other people did. Her

impression was the wages could be claimed for a two-year period. The claimant could not go beyond two years.

Mr. Andrew said other than minimum wage and overtime under Federal law, there is no exception.

SEN. BARTLETT remarked her understanding in the working group was that the claimant could recover for a two-year period.

Mr. Andrew reported the working group tried to make the State law similar to Federal law for conformity purposes.

SEN. BARTLETT asked if the Committee might consider an amendment which would specify the employee may recover wages or penalties for a period up to two years. Also, a similar amendment in subsection three where there are repeated violations to recover wages up to three years. If there were wage violations for as much as two years or more, someone could receive recovered wages and penalties for that full two year period.

CHAIRMAN KEATING thought that amendment would include any two year period. There is no beginning time.

SEN. COCCHIARELLA explained that is what she intended in her amendment but it goes beyond that. There were members of that group who didn't understand what this language was saying. She made the statement she thought the language in her amendment went too far.

CHAIRMAN KEATING asked how many people would be affected by this.

Mr. Andrew explained they don't have the data to show how many people would fail to file a wage claim within the 180 days. His sense when he talked with his compliance people is it is not very many.

CHAIRMAN KEATING related since we do not have any experience in this area, he would rather leave the bill as it is and in two years if there is experience in this area to know what is happening, those who are watching this could come back to work on an amendment to fit the circumstances.

SEN. COCCHIARELLA mentioned **REP. SLITER** already addressed this issue.

CHAIRMAN KEATING said he understood **REP. SLITER'S** amendment to read you could file a claim within 24 months rather than 180 days.

Mr. Andrew related that language is in there, the clock is ticking all that time anyway.

CHAIRMAN KEATING stated in other words, a person has to have timely claims. That person cannot wait a few years to figure out he or she has lost something, then go back to try to recover it.

SEN. BARTLETT remarked also, in part the reality of the wage claim is that people don't always immediately know they've had a loss. There is an interest in having them act as soon as they've become aware of the underpayment, but there is no way any can guarantee they will have the knowledge they were cheated at the time it happens.

SEN. MCNUTT wanted to know how frequently this happens, and why people don't know. If this bill is passes, we will get a better look at how this is affecting people. People may want to get a claim filed and not dilly-dally around with it. He didn't want to withhold anything from somebody, but this might get it done quicker.

SEN. COCCHIARELLA explained she doesn't disagree with that, her problem is with the 180 days, they include those days as part of the time of recovery. She has no problem with people having to file.

SEN. BARTLETT said if somebody knows at the time they leave they got cheated, they will file immediately. They will get a full two years. But most employers in the private sector do not publicize their employee salary and wage information. They deal with each employee individually. She has experienced a reluctance among employees to talk about how much they are earning. In State and County government it is already publicized, but in the private sector is very different, that is why it may take some time for someone to find out they got cheated.

SEN. MCNUTT stated his experience as an employer is that employers can't keep those secrets. His employees know what one another is making.

CHAIRMAN KEATING remarked it seems to him the working committee worked on this 18 months and he doesn't know if this Committee should make a decision of this magnitude in 15 minutes. He asked **SEN. COCCHIARELLA** if she would like to try her amendments.

SEN. COCCHIARELLA answered no, she thinks she will vote against the bill because of that provision. She doesn't believe the working committee had a good understanding of the topic. She doesn't think her amendment will fix that.

Motion/Vote: **SEN. BARTLETT** moved that **HB 592 BE CONCURRED IN. Motion carried 8-1 with SEN. COCCHIARELLA voting no.**

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3-9-98
BILL NO. HB 592

Amendments to House Bill No. 592
3rd Reading Copy

Requested by Representative Chase Hibbard

For the Senate Labor and Employment Relations Committee

Prepared by Eddye McClure
March 3, 1999 (12:58PM)

1. Page 32, line 8.
Strike: "39-51-310, 39-51-2404,"

- END -

MONTANA SENATE
1999 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 3/9/99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	✓		
SEN. DALE BERRY	✓		
SEN. VICKI COCCHIARELLA	✓		
SEN. ALVIN A. ELLIS, JR.	✓		
SEN. BOB KEENAN	✓		
SEN. WALT MC NUTT	✓		
SEN. BILL WILSON	✓		
SEN. FRED THOMAS, VICE CHAIRMAN	✓		
SEN. TOM KEATING, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Labor and Employment Relations** report that **House Bill 592** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Senator Tom Keating, Chair

To be carried by Senator Sue Bartlett

And, that such amendments read:

1. Page 32, line 8.
Strike: "39-51-310, 39-51-2404,"

- END -

Committee Vote:
Yes 8, No 1.

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